IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1120 OF 2004

Smt.Pramila Sadashiv Dali
(since deceased through her
heirs) .. Apepllants

Versus

Krishna Govind Gandhi and Ors. .. Respondents

Mr.S.B.Shjetye with Ms.Swati Sawant for appellants
Mr.R.v.More for respondent no.1.

CORAM : P.V.KAKADE,J.
DATE : 24TH NOVEMBER, 2004

P.C.:

1. This second appeal is preferred against the Judgment and Order passed by District Judge, Ratnagiri on 13th August 2003 dismissing the appeal and confirming the order passed by the lower court decreeing the Plaintiff’s suit for declaration, injunction and

possession with direction that the appellants-defendants particularly restrained from causing any obstruction in plaintiff's use and enjoyment over the suit property. Plaintiff was also held to get lock open through defendants, or through local process, and the plaintiff 2as also entitled to recover possession of concerned premises along with recovery of Rs.3060/= from defendants.

2. I heard the learned counsel for the appellant.

. the plaintiff filed the suit in respect of the property bearing No.479 Sub Division No.18 admeasuring 2-R situated within the limits of Ratnagiri Municipality. In some portion there was a construction, which was given CTS No.2416, 2416/1 and 2416/2. This house is given No.1995 in the assessment record of Ratnagiri Municipality. There are two rooms and they are in occupation two defendants i.e. defendant No.3 and Defendant no.4. Plaintiff came with the case that one Narayan Gandhi was common ancestor of the plaintiff and defendant nos.1 and 2. Narayan had two sons by name Gangan and Govind. Gangan died without any issue leaving behind widow Anandi. Govind left behind two

sons by name Dattatray and Krushna and one daughter by name Pramila. The Plaintiff is son of Govind and Pramila is made defendant no.1. The Defendant No.2 is daughter of the defendant no.1. It was the Plaintiff's case that the suit property was originally owned by Anandibai and she died in the year 195. It was further alleged that the plaintiff being the only male descendant of the original ancestor, he has become owner of the suit property and the defendant nos. 1 and 2 cannot have any concerned with the suit property. It was also alleged that on 5.4.1917 Anandibai sold the suit property to Dattatray, the brother of plaintiff, but on 15.11.1927 she again purchased the suit property from Dattatray under registered sale deed. This fact was concealed in order to entering her name in the record and for giving the property to the defendant no.1 in the year 1979. The property mentioned in the gift deed dated 23.7.1979 was altogether different and so the defendant no.1 had not become the owner of the suit property.

. The trial court adjudicated the dispute and held that the plaintiff had proved that he was having title of the property and entitled the perpetual injunction

against the defendant nos.1 and 2. It was also held that the plaintiff was entitled to recover the possession of suit property and the suit came to be decreed with consequential reliefs. The appeal carried against the said order was also dismissed confirming the reasoning adopted and findings recorded by the lower court. Hence the present second appeal.

3. At the outset it may be noted that perusal of the entire record shows that there is absolutely no substantial question of law involved and the entire dispute was balanced on issue of facts, which are seen to be appreciated in just, proper and correct manner. It is well settled law that the concurrent findings of the facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. In the present case, both the courts below are seen to have appreciated factual aspect of the evidence properly and correctly and therefore, it would brook no interference.

4. In the result the appeal stands dismissed in limine.